

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2784 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PINDHARA HARUNBHAI SABBIRBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr S J Dave, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/09/98

ORAL JUDGEMENT

The petitioner has been detained by the order of the District Magistrate, Patan dated 17.2.1998 under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act'). The petitioner has been branded as a dangerous person as well as bootlegger. Three cases have been registered against him under the Prohibition Act.

One case has been registered for offences under Section 323, 325, 506(2) of IPC and Section 135 of the Bombay Police Act. Following the decision of the apex court in the case of PIYUSH KANTILAL MEHTA VS. COMMISSIONER OF POLICE, AHMEDABAD & ORS. reported in AIR 1989 SC 491, it cannot be said that the activity of the petitioner as bootlegger has affected adversely or likely to affect the maintenance of public order. One case has been registered for various offences under the Indian Penal Code and under the Bombay Police Act.

It is well also settled that in order to bring a person within the expression 'dangerous person' as defined in clause (c) of Section 2 of the PASA Act there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of IPC or Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in Section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of MUSTAK MIYA SHAIKH VS. M.M. MEHTA reported in 1995(2) GLR 1268.

I have perused the materials available on record with the assistance of the learned Advocate. The statement of the witnesses are of general nature and vague. Considering the material on record, I do not find anything which may indicate that the petitioner is a dangerous person. Thus, in my view, the order of detention is illegal and the same cannot be sustained.

In view of the aforesaid, this Special Civil Application is allowed. The order of detention dated 17.2.1998 passed by the District Magistrate, Patan is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule is made absolute accordingly.

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msp.